

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION No. 14-MD-2543 (JMF)
No. 14-MC-2543 (JMF)

This Document Relates To All Actions

**APPLICATION OF HARLEY S. TROPIN, ESQ. FOR
PLAINTIFFS' CO-LEAD COUNSEL**

Pursuant to Part II of Order No. 5, I, Harley S. Tropin of Kozyak Tropin & Throckmorton (“KTT”), respectfully apply for the position of Co-Lead Counsel for Plaintiffs in this action.

Upon filing our complaint in *Espineira v. General Motors LLC, et al.*, Case No. 14-21417 (S.D. Fla.), my team and I recognized that this litigation required cooperation among various law firms in different jurisdictions with expertise in several areas of law — primarily complex tort law and bankruptcy. Together with Podhurst Orseck, we hired Melanie Cyganowski and her firm Otterbourg P.C. to represent the interests of our clients in the GM bankruptcy proceedings. Working in cooperation with KTT’s own bankruptcy department, Ms. Cyganowski has been appointed Liaison Counsel by the plaintiffs in the bankruptcy proceedings.

In addition to retaining Ms. Cyganowski and her firm, my partner Adam M. Moskowitz and I have developed a coalition of 13 firms representing 135 plaintiffs in 33 states, all of which support my appointment to the position of Co-Lead Counsel.¹ That coalition is relevant to our ability to work cooperatively in this case.

¹ These firms include Whatley Kallas LLP; Hiden, Rott & Oertle, LLP; Harke Clasby & Bushman LLP; Searcy Denney Scarola Barnhart & Shipley, P.A.; Freidin, Dobrinsky, Brown & Rosenblum P.A.; Wiggins, Childs, Quinn & Pantazis, LLC; Merlin Law Group, P.A.; Archie Lamb & Associates, P.A.; Fuerst Ittleman David & Joseph, PL; Gray & White; Rivero Mestre LLP; Higer Lichter & Givner LLP; and Otterbourg P.C.

I welcome the opportunity to serve the GM plaintiffs and will personally commit my time and energy to this case. As discussed below, both my firm and I are uniquely qualified to play a lead role in this litigation in that we have knowledge and experience in prosecuting complex litigation, including class actions; the ability to work cooperatively with others; the access to sufficient resources to prosecute the litigation in a timely manner; and the willingness and ability to commit to a time-consuming process.

Since its founding in 1982, KTT has been a South Florida complex litigation boutique with core practice areas in class actions, business torts, and bankruptcy. KTT has played a leading role in some of the most significant class actions in the nation.

In *Klay v. Humana*, D.C. Docket No. 00-01334-MD-FAM (the “Managed Care Litigation”), I served as co-lead counsel for plaintiffs in a multidistrict litigation in which medical societies and several hundred thousand physicians sued Aetna, Cigna, Humana, and other managed care organizations. The case was successfully certified as a RICO class action, and, along with a second, equally challenging action brought against the Blue Cross entities, was settled for hundreds of millions of dollars as well as structured relief to physicians valued at several billion dollars. *Klay v. Humana, Inc.*, 382 F.3d 1241 (11th Cir. 2004).

The Managed Care Litigation has relevance here because GM’s conduct will require the careful assessment of a national RICO claim brought on behalf of thousands of consumers. The Managed Care Litigation required, as this case will, the ability to work closely with lawyers from different backgrounds in representing different clients to reach a consensus to bring matters to a conclusion. The Managed Care Litigation also required, as will this action, the knowledge and experience to recognize which matters are worth fighting over and which need to be compromised, so that a successful outcome can be achieved. KTT’s

handling of the Managed Care Litigation resulted in my receiving the “Most Effective Lawyer” award from the American Lawyer Media in 2005.

Another case which underscores the effectiveness of the KTT team in complex, commercial actions is *Razorback Funding, LLC, et al., v. Scott W. Rothstein, et al.*, Case No. 09-062943 (07) (17th Cir. Fla.). In 2010, a corrupt Fort Lauderdale lawyer, Scott Rothstein, operated a \$1.2 billion Ponzi scheme through which he swindled 260 investors out of close to five hundred million dollars. The Ponzi scheme has been recognized as the second largest fraud in Florida. Representing 70% of the victims, KTT — acting as co-lead counsel — has recovered virtually all of these victims’ roughly \$256 million in investment losses representing over 50% of total investor losses in the Ponzi scheme. The success rate for these victims has dwarfed those in other recent, massive Ponzi schemes. This led to another “Most Effective Lawyer” designation in 2012 for myself and my co-counsel, Bill Scherer.

Other successful complex litigation matters that we have prosecuted include:

- Serving as receiver, trustee, and chairman of the litigation steering committee in the *Premium Sales* securities fraud litigation pending in the United States District for the Southern District of Florida, *Securities and Exchange Commission v. Premium Sales Corp., et al.*, Case No. 93-1092-CIV-MORENO, and the United States Bankruptcy Court for the Southern District of Florida, *In Re: Premium Sales Corporation*, Case No. 93-12253-BKC-AJC. Those actions resulted in recoveries of 62% of investor losses (after fees) in a \$300 million Ponzi scheme.
- Serving as lead counsel for 8,000 investors in *In Re: US Oil & Gas*, Case No. 83-1702-AI-CIV-WMH, a securities fraud class action in which the class recovered its entire net loss in settlement on the eve of trial.
- Serving as lead counsel for the liquidating bankruptcy trustee in an accounting malpractice case, *Development Specialists, Inc. v. KPMG Peat Marwick*, Case No. CL 98-1783 AH. Following a ten-week jury trial in December 1999, an award of \$5 million plus interest and costs was obtained.
- Serving as lead counsel for class plaintiffs in *Smith and Estes v. First Union National Bank*, Case No. 00-4485-CIV-MARRA, a class action against First Union for aiding and abetting a Ponzi scheme. The action was settled after four days of trial for \$5 million.

- Serving as lead counsel in *Leor Exploration & Prod., LLC v. Aguiar*, Case No. 09-60136 (S.D. Fla.), defending a claim for well over a billion dollars while prosecuting a counterclaim for approximately \$180 million involving an oil and gas venture. I supervised a team of lawyers from New York, Texas, Florida, and (briefly) Brazil. Our client won the main claim outright, *see Leor Exploration & Prod., LLC v. Aguiar*, 2010 U.S. Dist. LEXIS 101824 (S.D. Fla.), and settled all of the litigation favorably.

KTT is also uniquely situated to litigate the GM bankruptcy issues. KTT's bankruptcy department has been "Band 1-rated" in Florida in Chambers & Partners Guide since the guide's inception. Three of our five bankruptcy partners are fellows in the American College of Bankruptcy. The firm has extensive experience representing class plaintiffs and other plaintiff groups in bankruptcy-related litigation including:

- Representing 70% of investors in Ponzi scheme and successfully litigating against a bankruptcy case bar order to maximize investor recovery. *In re Rothstein, Rosenfeldt & Adler, P.A.*, Case No. 09-34791 (Bankr. S.D. Fla. 2009) (resulted in 2014 Most Effective Lawyer award).
- Handling overlapping and concurrent class action and bankruptcy litigation. *In re Northwest Airlines Corp. et al Antitrust Litig.*, Case No. 96-74711 (E.D. Mich.); *In re Northwest Airlines Corp, et al.*, Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. 2005).
- Litigating issues relating to confirmation of a bankruptcy plan and trust dealing with present and future asbestos-related property damage class claims. *In re WR Grace & Co.*, Case Nos. 12-2923 & 12-3143 (3d Cir.).
- Pursuing post-bankruptcy confirmation litigation trust claims. *In re Celotex Corp.*, 487 F.3d 1320 (11th Cir. 2007) (we represented the national steering committee of all property damage asbestos claimants).
- Representing an SEC-appointed receiver handling litigation claims on account of a \$1.25 billion insurance fraud scheme. *S.E.C. v. Mutual Benefits Corp. et al.*, Case No. 04-67503 (S.D. Fla.) (resulted in 2009 Most Effective Lawyer award).

Personally, I have been recognized by Best Lawyers in America since 1989 and am in the top-tier litigation category of "Bet-The-Company Litigators." This month, I was awarded by Best Lawyers, "Lawyer of the Year" for Miami Mass Tort Litigation/Class Actions – Plaintiffs (2015). Chambers USA has also placed me in its top "Tier 1" ranking. In July 2009, I was one of

50 Florida Lawyers named to the Florida Legal Elite Hall of Fame. I am also a member of the Federal Judicial Nominating Commission, chair of the Advisory Committee to the University of Miami Medical School Psychiatry Department, adjunct professor of trial advocacy at the University of Miami School of Law, and member of the board of directors of the International Academy of Trial Lawyers. I have served on the Florida Supreme Court Committee on Gender Bias and Diversity, and in 2004, KTT was recognized by the Chief Justice of the Florida Supreme Court for our contributions in pro bono and diversity.

KTT has and will continue to dedicate all of its resources to investigate, research, and prosecute GM cases. We have litigated some of the largest MDL class actions in the nation, giving us the experience necessary to effectively resolve this complicated dispute. KTT regularly advances substantial out-of-pocket litigation costs and is thus well-suited to commit to efficiently prosecute this complicated MDL litigation in a timely manner. I represent that our firm has the resources to prosecute this case, and our past performance demonstrates this ability.

I respectfully request the opportunity to address the Court at the August 11, 2014 Initial Conference to discuss my qualifications and respond to any questions.

CERTIFICATE OF SERVICE

I certify that the above pleading was electronically filed and served by ECF on July 28, 2014.

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